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Salaried Retiree of Debtors

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----x Chapter 11 Case No. 05-44481 (RDD)

In re:

DELPHI CORPORATION, et. al.,

Debtors.

:(Jointly Administered):

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**APPELLANTS' STATEMENT OF ISSUES AND
DESIGNATION OF RECORD ON APPEAL**

Appellant, James B. Sumpter, pursuant to Rule 8006 of the Federal Rules of Bankruptcy Procedure, hereby designate the record and state the issues to be presented on appeal, as follows:

I. STATEMENT OF ISSUES ON APPEAL

The issues to be presented on appeal are:

1. Did the Bankruptcy Court commit a reversible error by not disallowing Debtors Response, since Debtor did not make a statement alleging that the proceedings were either Core or non-Core; which would have resulted in a default judgment in favor of the Recoupment

Motion?

2. Did the Bankruptcy Court commit a reversible error by basing its decision on erroneous information from Debtors attorney, which stated that the Salaried Disability Plan and the resulting payments from DPH had been terminated when OPEB benefits were terminated.

3. Did the Bankruptcy Court commit a reversible error in not permitting the Recoupment Motion to represent the interest of all salaried retirees?

4. Did the Bankruptcy Court commit a reversible error in ruling that the Courts prior orders regarding OPEB benefits, because of res judicata, barred the Recoupment Motion?

5. Did the Bankruptcy Court commit a reversible error by ruling that the Plan Modification Order and the e res judicata effect bars equitable recoupment, which was sought by the Amended Recoupment Motion?

6. Did the Bankruptcy Court commit a reversible error by not recognizing that Equitable Recoupment is a **defense** against a Discharge in Bankruptcy; and therefore the Amended Recoupment Motion is defensive in nature?

7. Did the Bankruptcy Court commit a reversible error by not recognizing that the Recoupment Motion sought recoupment as a defense against future payments since the motion was also seeking credits to future payments? [See page 15 –paragraph 36-iii; and page 16- paragraphs 37-C and 37-D in Amended Recoupment Motion [Docket # 21566]?

8. Did the Bankruptcy Court commit a reversible error by ruling that the Amended Recoupment Motion was asserting a claim?

9. Did the Bankruptcy Court commit a reversible error by ruling that Equitable Recoupment does not permit a refund or recovery of funds.

10. Did the Bankruptcy Court commit a reversible error by interpreting the Recoupment Motion as a request for a payment, which was based on the erroneous understanding that Disability Benefits had been cancelled and that no disability payments were being made by Delphi or its successor DPH?

11. Did the Bankruptcy Court commit a reversible error by ruling that section 1144 of the Bankruptcy Code along with the broad definition of "claim" in Section 101(5) precludes the assertion of recoupment rights after the confirmation and effective date of a Chapter 11 plan, when applied to the Amended Recoupment Motion [docket # 21566]?

12. Did the Bankruptcy Court commit a reversible error by not recognizing that although recoupment is a defensive doctrine, a creditor may take the offensive and seek an adjudication that it may recoup without waiting for the debtor to bring suit. [*See In re Flagstaff Realty Assocs.*, 60 F.3d 1031, 1035 (3d Cir. 1995)].

II. DESIGNATION OF RECORD

DESIGNATION OF RECORD			
	Date Filed	Docket No.	Description
1	22-AUG-2011	Docket # 21534	Motion For Recoupment on Behalf of Delphi Salaried Retirees
2	24-AUG-2011	<u>Not Docketed</u>	E-mail chain regarding Discovery Request by James Sumpter and the related responses by DPH and the Court.
3	29-AUG-2011	Docket # 21551	Letter in Response to August 26, 2011 E-Mail Written to Judge Drain by Mr. Louis Chiappetta Asking for a Sua Sponte Dismissal of Recoupment Motion [re: Docket No. 21534]
4	8-SEP-2011	Docket # 21566	Amended Motion for Recoupment on Behalf of Delphi Salaried Retirees [Re: Docket No. 21534]
5	15-SEP-2011	Docket # 21581	Reorganized Debtors' Response In Opposition To Amended Motion For Recoupment On Behalf Of Delphi Salaried Retirees
6	21-SEP-2011	Docket # 21658	Reply To Debtor's Response [Docket # 21581] To The Amended Motion For Recoupment On Behalf Of Delphi Salaried Retirees [Docket # 21566]
7	26-SEP-2011	Docket # 21609	Transcript Regarding Hearing Held on September 22, 2011 [re: Docket Nos. 21534] [Image Not Available]
8	26-SEP-2011	<u>Not Docketed</u>	E-mail by James Sumpter proving Debtor error in Hearing regarding termination of OPEB benefits
9	30-SEP-2011	Docket # 21603	Reorganized Debtors' Letter in Response to September 26, 2011 E-mail of James Sumpter Filed by David J. DeVine on behalf of DPH Holdings Corp., et al.. [re: Docket No. 21534]
10	13-OCT-2011	Docket # 21645	Order Denying Amended Motion For Recoupment On Behalf Of Delphi Salaried Retirees
11	19-OCT-2011	Docket # 21671	Notice Of Appeal

DESIGNATION OF RECORD			
	Date Filed	Docket No.	Description
12	19-OCT-2011	Docket # 21671	Statement Of Election That Appeal Be Heard By The United States District Court For The Southern District Of New York

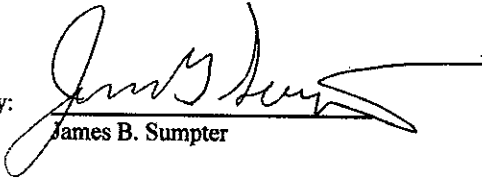
III. DESIGNATION OF RECORD - Related Documents

DESIGNATION OF RECORD - <u>Related Documents</u>			
	Date Filed	Docket No.	Description
13	17-FEB-2009	Docket # 14898	Objection to Motion to Terminate OPEB Benefits (re: Docket No. 14705)
14	12-MAR-2009	Docket # 16451	Transcript of Hearing Held on February 24, 2009 at 10:08 a.m. (re: Termination of OPEB Benefits)
15	11-MAR-2009	Docket # 16448	Final Order Under 11 U.S.C. §§ 105, 363 (b)(1), 1108, and 1114 (d) (I) Confirming Debtors' Authority to Terminate Employer-Paid Post-Retirement Health Care Benefits and Employer-Paid Post-Retirement Life Insurance Benefits for Certain (a) Salaried Employees and (b) Retirees and Their Surviving Spouses and (II) Amending Scope and Establishing Deadline for Completion of Retirees' Committee's Responsibilities ("Final OPEB Termination Order")
16	17-JUL-2009	Docket # 18367	Motion to Shorten Notice with Respect to James B. Sumpter's Expedited Motion to Enforce COBRA Benefit for Delphi Salaried Retirees and Motion for COBRA Settlement

DESIGNATION OF RECORD - <u>Related Documents</u>			
	Date Filed	Docket No.	Description
17	17-JUL-2009	Docket # 18366	Expedited Motion to Enforce COBRA Benefit for Delphi Salaried Retirees and Motion for COBRA Settlement (COBRA Benefit Motion)
18	30-JUL-2009	Docket # 18707	Order Approving Modifications Under 11 U.S.C. § 1127(b) to (I) First Amended Joint Plan of Reorganization of Delphi Corporation and Certain Affiliates, Debtors and Debtors-In-Possession, as Modified and (II) Confirmation Order (Docket No. 12359) ("Plan Modification Order")
19	3-AUG-2009	Docket # 18723	Order Denying Expedited Motion to Enforce COBRA Benefits for Salaried Retirees and Motion for COBRA Settlement (COBRA Benefit Motion)
20	7-AUG-2009	Docket # 18829	Transcript Regarding Hearing Held on July 29, 2009 at 3:22 p.m. (re: COBRA Benefit Motion)
21	7-AUG-2009	Docket # 18830	Transcript Regarding Hearing Held on July 30, 2009 at 11:52 a.m. (re: COBRA Benefit Motion)
22	13-JUN-2011	Docket # 21308	Request for Stay of Court Order and Related Proceedings Regarding of VEBA in Lieu of COBRA Ruling (Docket # 21306)
23	20-JUN-2011	Docket # 21402	Objection of the VEBA Committee for the Delphi Salaried Retirees Association Benefit Trust to the "Request for Stay of Court Order and Related Proceedings Regarding of VEBA in Lieu of COBRA Ruling" Filed by James B. Sumpter, Pro Se
24	20-JUN-2011	Docket # 21400	Reorganized Debtors' Objection to Request for Stay of Court Order and Related Proceedings Regarding of VEBA in Lieu of COBRA Ruling (Docket # 21306) ("Objection to James Sumpter's Expedited Stay Motion")
25	20-JUN-2011	Docket # 21404	Objection of the Official Committee of Salaried Retirees to James B. Sumpter's "Request for Stay of Court Order and Related Proceedings Regarding of VEBA in Lieu of COBRA Ruling"
26	27-JUN-2011	Docket # 21491	Transcript Regarding Hearing Held on June 23, 2011 (re: Request for Stay regarding VEBA in Lieu of COBRA)

DESIGNATION OF RECORD - <u>Related Documents</u>			
	Date Filed	Docket No.	Description
27	27-JUN-2011	Docket # 21415	Order Denying James B. Sumpter's Request for Stay of Court Order and Related Proceedings Regarding of VEBA in Lieu of COBRA Ruling (Docket # 21306)
28	27-JUN-2011	Docket # 21417	Letter by James B. Sumpter re: DPH, James B. Sumpter and Various Bankruptcy COBRA Motions for Delphi Salaried Retirees and Request for Negotiations
29	4-OCT-2011	Docket # 21607	Motion Of DPH Holdings Corp. For Final Decree And Order Pursuant To 11 U.S.C. § 350(A) And Fed. R. Bankr. P. 3022 And Local R. Bankr. P. 3022-1 Closing Chapter 11 Cases Of Five Filing Debtors
30	13-OCT-2011	Docket # 21660	Objection To Motion For Final Decree And Order Pursuant To 11 U.S.C. § 350(A) And Fed. R. Bankr. P. 3022 And Local R. Bankr. P. 3022-1 Closing Chapter 11 Cases Of 20 Filing Debtors [Docket # 21607]
31	21-OCT-2011	Docket # 21676	Reply Of DPH Holdings Corp. To James B. Sumpter's Objection To Motion For Final Decree And Order Pursuant To 11 U.S.C. § 350(A) And Fed. R. Bankr. P. 3022 And Local R. Bankr. P. 3022-1 Closing Chapter 11 Cases Of Five Filing Debtors

Dated: Noblesville, Indiana
October 30, 2011

By: 
James B. Sumpter

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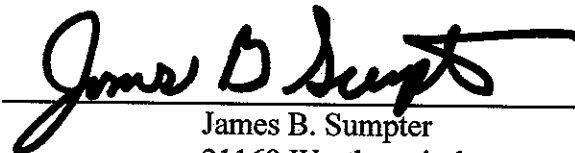
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AFFIDAVIT OF SERVICE

I, James B. Sumpter, do hereby state that relative to the Statement of Issues on Appeal and Designation of Record for:

**APPEAL OF ORDER DENYING AMENDED MOTION FOR
RECOUPMENT ON BEHALF OF DELPHI SALARIED RETIREES**

I served copies of the above document on the entities listed in Exhibit A, via Fed-Ex. All documents were sent via FED EX overnight on 31-SEP-2011.



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31/10/2011

Date

ATTACHMENT A

Serving Date - October 31, 2011

Appeals Clerk
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